



COUNCIL CHAMBERS

17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

COUNCIL MEMBERS	REDEVELOPMENT AGENCY
Dennis Kennedy, Mayor	Dennis Kennedy, Chair
Hedy Chang, Mayor Pro Tempore	Hedy L. Chang, Vice-Chair
Larry Carr, Council Member	Larry Carr, Agency Member
Greg Sellers, Council Member	Greg Sellers, Agency Member
Steve Tate, Council Member	Steve Tate, Agency Member

WEDNESDAY, JANUARY 29, 2003

AGENDA

JOINT MEETING

CITY COUNCIL SPECIAL MEETING

and

REDEVELOPMENT AGENCY SPECIAL MEETING

7:00 P.M.

A Special Meeting of the City Council and Redevelopment Agency Is Called at 7:00 P.M. for the Purpose of Conducting City Business.

Dennis Kennedy, Mayor/Chairman

CALL TO ORDER

(Mayor/Chairperson Kennedy)

ROLL CALL ATTENDANCE

(City Clerk/Agency Secretary Torrez)

DECLARATION OF POSTING OF AGENDA

Per Government Code 54954.2

(City Clerk/Agency Secretary Torrez)

7:00 P.M.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

NOW IS THE TIME FOR COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THIS AGENDA.

(See notice attached to the end of this agenda.)

**PUBLIC COMMENTS ON ITEMS APPEARING ON THIS AGENDA WILL BE TAKEN AT THE TIME
THE ITEM IS ADDRESSED BY THE COUNCIL. PLEASE COMPLETE A SPEAKER CARD AND
PRESENT IT TO THE DEPUTY CITY CLERK.**

(See notice attached to the end of this agenda.)

**PLEASE SUBMIT WRITTEN CORRESPONDENCE TO THE CITY CLERK/AGENCY SECRETARY. THE
CITY CLERK/AGENCY SECRETARY WILL FORWARD CORRESPONDENCE TO THE CITY
COUNCIL/REDEVELOPMENT AGENCY.**

City Council Action and Redevelopment Agency Action

CONSENT CALENDAR

ITEMS 1-4

The Consent Calendar may be acted upon with one motion, a second and the vote, by each respective Agency. The Consent Calendar items are of a routine or generally uncontested nature and may be acted upon with one motion. Pursuant to Section 5.1 of the City Council Rules of Conduct, any member of the Council or public may request to have an item pulled from the Consent Calendar to be acted upon individually.

Time Estimate

Consent Calendar: 1 - 10 Minutes

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| 1) | <u>APPROVAL OF JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY
MEETING MINUTES FOR JANUARY 10, 2003</u> | 1 |
| 2) | <u>APPROVAL OF JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY
ADJOURNED MEETING MINUTES FOR JANUARY 11, 2003</u> | 5 |
| 3) | <u>APPROVAL OF SPECIAL CITY COUNCIL MEETING MINUTES FOR JANUARY 15, 2003</u> | 7 |
| 4) | <u>APPROVAL OF JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL
REDEVELOPMENT AGENCY MEETING MINUTES FOR JANUARY 15, 2003</u> | 9 |

WORKSHOP:

- 5) **CONSIDERATION OF REVISIONS TO ALLOCATION OF REDEVELOPMENT TAX
INCREMENT**

FUTURE COUNCIL-INITIATED AGENDA ITEMS:

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

ADJOURNMENT

**CITY OF MORGAN HILL
JOINT SPECIAL CITY COUNCIL AND
SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES JANUARY 10, 2003**

CALL TO ORDER

Mayor/Chairperson Kennedy called the special meeting to order at 8:30 a.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Sellers, Tate and Mayor/Chairperson Kennedy

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk/Deputy Agenda Secretary Tewes certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2

City Council and Redevelopment Agency Action

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the floor to comments for items not appearing on the agenda. No comments were offered.

1. GOAL SETTING WORKSHOP

The City Council/Redevelopment Agency reviewed the accomplishments of the past year, focusing on what the Council Members/Agency Board and Council Members/Agency Board and staff did well. The Council Members/Agency Board listed individual proposed goals and discussed the following subject matters: 1) City Budget; 2) Redevelopment Agency; 3) Economic Development; 4) Measure P; 5) Council Committees; and 6) Medical Services.

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the following closed session items:

1.

CONFERENCE WITH LABOR NEGOTIATOR:

Authority:	Government Code Section 54957.6
Agency Negotiators:	Ed Tewes, City Manager
Employee Organization:	AFSCME Local 101
	Morgan Hill Community Service Officers Association
	Morgan Hill Police Officers Association

Unrepresented Employees: Custodian/Building Maintenance Worker
 Government Access Technician
 Maintenance Worker Assistant
 Utility Worker Assistant

Executive Management Group 1-A
 Chief of Police
 Director of Business Assistance & Housing Services
 Director of Community Development
 Director of Finance
 Director of Public Works/City Engineer
 Human Resources Director
 Recreation and Community Services Manager
 Assistant to the city Manager
 Council Services and Records Manager

Middle Management Group 1-B
 Police Captain
 Deputy Director of Public Works
 Assistant City Attorney
 Assistant Director of Finance
 Chief Building Official
 Human Resources Supervisor
 Planning Manager
 Senior Civil Engineer
 Budget Manager
 Business Assistance and Housing Services Manager
 Police Support Services Supervisor
 Senior Planner
 Project Manager
 Utility Systems Manager
 Recreation Supervisor
 Secretary to the City Manager

Confidential Non-Exempt Employees Group 1-C
 Administrative Analyst
 Secretary to the City Attorney
 Accounting Technician
 Human Resources Assistant

2.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code 54957

Public Employee Performance Evaluation: City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the closed session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to closed session at 4:00 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 4:48 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that there was no reportable action taken under closed session item 1. The City Council/Redevelopment Agency continued closed session item 2 to an adjourned meeting scheduled for January 11, 2003 at 8:30 a.m.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairperson Kennedy adjourned the meeting at 5:00 p.m. to an adjourned meeting scheduled for Saturday, January 11, 2003 at 8:30 a.m.

MINUTES PREPARED BY

IRMA TORREZ, City Clerk

**CITY OF MORGAN HILL
JOINT SPECIAL CITY COUNCIL AND
SPECIAL REDEVELOPMENT AGENCY ADJOURNED MEETING
MINUTES - JANUARY 11, 2003**

CALL TO ORDER

Mayor/Chairperson Kennedy called the meeting to order at 8:30 a.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Sellers, Tate, Sellers and
Mayor/Chairperson Kennedy

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk/Deputy Agenda Secretary Tewes certified that the meeting=s agenda was duly noticed and posted in accordance with Government Code 54954.2

City Council and Redevelopment Agency Action

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the floor to comments for items not appearing on the agenda. No comments were offered.

1. GOAL SETTING WORKSHOP

The City Council/Redevelopment Agency continued their discussions of the accomplishments of the past year.

The City Council/Redevelopment Agency established the following meeting dates:

- ▶ January 24, 2003 – Goal Setting workshop
- ▶ January 29, 2003 – Consideration of the Redevelopment Agency Allocation Process
- ▶ February 5, 2003 – Consider City Budget

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the following closed session item:

1.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code 54957

Public Employee Performance Evaluation: City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the closed session item to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to closed session at 11:45 a.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 12:59 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that there was no reportable action taken in closed session.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairperson Kennedy adjourned the meeting at 5:00 p.m.

MINUTES PREPARED BY

IRMA TORREZ, City Clerk

**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – JANUARY 15, 2003**

CALL TO ORDER

Mayor Kennedy called the meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Sellers, Tate and Mayor Kennedy
Late: Council Member Chang (arrived at 6:09 p.m.)

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2

City Council Action

CLOSED SESSION:

City Attorney Leichter announced the following closed session items.

1.

EXISTING LITIGATION

Case Title: Kennedy et al. v. Davis et al.
Case Name/No.: Santa Clara County Superior Court Case No. CV 803679
Attendees: City Manager, City Attorney

2.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code 54957
Public Employee Performance Evaluation: City Manager
Attendees: City Council, City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the closed session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to closed session at 6:03 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 7:00 p.m.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

Mayor/Chairperson Kennedy led the Pledge of Allegiance.

CLOSED SESSION ANNOUNCEMENT

City Attorney Leichter announced that no reportable action was taken in closed session. She indicated that the Council continued the Closed Session items as listed on the Special Meeting agenda to the conclusion of the Special/Regular City Council and Special Redevelopment meeting.

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the closed session items to public comment. No comments were offered.

READJOURN TO CLOSED SESSION

Mayor Kennedy re adjourned the meeting to closed session at 8:40 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 9:47 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney Leichter announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 9:48 p.m.

MINUTES RECORDED AND PREPARED BY

IRMA TORREZ, City Clerk

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL AND
SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – JANUARY 15, 2003**

CALL TO ORDER

Mayor/Chairperson Kennedy called the meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Sellers, Tate and Mayor/Chairperson Kennedy
Late: Council/Agency Member Chang (arrived at 6:09 p.m.)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agenda Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the following closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 4

2.

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION:
CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Legal Authority: Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)

Real Property(ies) involved: APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of
Cochrane Road (St. Louise Hospital property)

City Negotiators: Agency Members; Executive Director; Agency Counsel; F. Gale Conner,
special counsel; Rutan & Tucker, special counsel

Case Name: San Jose Christian College v. City of Morgan Hill

Case Numbers: Ninth Circuit Court of Appeal No. 02-15693

Closed Session Topic: Potential Existing Litigation/Real Estate Negotiations

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Legal Authority: Government Code Section 54965.9(a)

Case Name: Morgan Hill Unified School District v. Minter & Fahy

Case No.: Santa Clara County Superior Court, No. CV 772368

Attendees: City Council, City Manager, City Attorney, Mark Strombotne, Special
Counsel

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the closed session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to closed session at 6:03 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 7:00 p.m.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

Mayor/Chairperson Kennedy led the Pledge of Allegiance.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that there was no reportable action taken in closed session. She indicated that the Council continued the closed session item as listed on the Special Meeting agenda to the conclusion of this meeting.

RECOGNITION

Human Resources Director Fisher announced the special recognition awards given to City of Morgan Hill employees for outstanding performance during 2002. Recipients of Peak Performance Awards were nominated for their award categories by their fellow employees. The following awards were announced: *Challenge Award* to Terrie Booten; *Innovation Award* to Rod DeGallery; *Professional Growth Award* to Steve Pennington; *Teamwork Award* to Tim Johnson, Karen Lengsfeld, Mark Rauscher, Tina Reza, and Mori Struve; and *Employee of the Year Award* to Bill Newkirk.

CITY COUNCIL REPORT

Council Member Sellers indicated that the dominant topic has been the State budget. He said that it was a major topic in the Council's workshop held on January 10 and 11, 2003. Discussed was how the City is to proceed because the State controls a significant amount of the City's resources. He stated that on Monday evening a majority of the City Council went to Mt. View to hear several of the senior legislators discuss their thoughts and listen to cities throughout Santa Clara County about how they should proceed with the budget. He said that everyone recognizes that there needs to be cuts in the budgets. The City anticipates that it will need to tighten its belt, noting that the City has already begun to do so. He stated that the City began last year, led by the City Manager who undertook an

aggressive plan to reduce the City's budget by 4%. He felt that the City has a lot more to do as the City anticipates more budget cuts coming from the State. He said that Assemblyman Simon Salinas spoke about balancing needs and making sure that the cuts are fair. Assemblyman Manny Dias was also in attendance as was a representative from Senator Bruce McPherson's office. He stated that the legislators did not offer solutions. However, it was his belief that cities in the county spoke as a unified body and offered different opinions as to what the best solutions would be. He said that everyone will be watching the next few months to make sure that the cutbacks being faced at city levels are fair and as minimal as possible. He stated that cities do not want the State to shift programs onto cities without providing funding to cities for implementation for the programs. He indicated that the City Council's Legislative Committee will be watching the budget process very closely. He stated that there will be an opportunity for the Legislative Committee to travel to Sacramento, from the region, to talk to legislators. He felt that this discussion will continue at the annual League of California conference to be held September 2003. He announced that the City would be opening the Community Playhouse on January 31, 2003. He encouraged the community to join the City in the celebration of yet another new public facility.

CITY MANAGER'S REPORT

City Manager Tewes stated that the Council challenged staff to do a better job in recruiting and retaining good employees. He assured the Council that the City has an outstanding group of employees. He said that staff strives to meet challenges, encourage innovation, to develop individually and professionally, and to perform in a team fashion. He felt that the community is well served by its staff. He stated that the City will need to rely on the strength of its employees as it moves forward in taking on some of the budget challenges that were mentioned by Council Member Sellers. At the January 10 and 11, 2003 Council retreat, the Council asked staff to schedule a special workshop on the implications of the state budget. He indicated that the workshop will be scheduled on February 5, 2003 at which time staff will bring back more details on the specific impacts of the proposed state budget and how the local economy is affecting the City. He said that staff will be agendaizing a discussion by the Council on whether or not to adopt a position regarding the Motor Vehicle Licensing fees and their appropriate levels. He invited the community to the ribbon cutting and grand opening ceremony of the Community Playhouse to be held on Friday, January 31, 2003 at 6:30 p.m. He indicated that there will be a sampler of performing arts beginning at 7:30 p.m. He recommended that individuals make reservations to the event as there is limited seating.

CITY ATTORNEY'S REPORT

City Attorney Leichter distributed the Monthly Litigation Summary, indicating that the cases are down to 13 as one case has been dismissed.

Mayor Kennedy indicated that the Council discussed in workshop adding a new item on the Council's Agenda for reports from Council committees that meet on a regular basis. He invited Council members to report on committee assignments. No committee reports were presented.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comment for items not appearing on the agenda. No comments were offered.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy removed item 3 and Council Member Sellers removed item 6 from the Consent Calendar.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0), **Approved** Consent Items 1,2,4,5 and 7-13, as follows:*

1. **DECEMBER 2002 FINANCE AND INVESTMENT REPORT**

Action: **Accepted** and **Filed** Report.

2. **PUBLIC ACCESS TELEVISION SERVICES**

Action: **Authorized** the City Manager to Execute a Contract with Morgan Hill Access Television for Public Access Services, Subject to Review by City Attorney.

4. **AMENDMENT TO RECORDS RETENTION SCHEDULE FOR CITY OF MORGAN HILL – Resolution No. 5628**

Action: **Adopted** Resolution No. 5628, Amending the City's Record Retention Schedule.

5. **MEASURE P UPDATE COMMITTEE – COMPLETION OF ASSIGNMENT**

Action: **By Minute Action, Allowed** Committee to Submit its Final Report to City Council on May 7, 2003.

7. **EXTENSION OF CONTRACT FOR CONSULTANT PLANNING SERVICES**

Action: **Authorized** the City Manager to Execute a Contract in the Amount of \$100,000 for Contract Planning Services.

8. **ENVIRONMENTAL ASSESSMENT APPLICATION EA-02-30: SAN PEDRO-CITY OF MORGAN HILL**

Action: **Adopted** the Negative Declaration by Minute Action.

9. **WAIVE READING OF ORDINANCE NO. 1598, NEW SERIES**

Action: **Waived** the Reading, and **Approved** Ordinance No. 1598, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title, and Further Reading Waived; Title as Follows: ***AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1523, NEW SERIES, TO AMEND THE DEVELOPMENT***

AGREEMENT TO INCORPORATE A SIX MONTH EXCEPTION TO LOSS OF BUILDING ALLOCATION FOR 5 BUILDING ALLOTMENTS FOR FY 2001-2002 AND A FIVE MONTH EXCEPTION TO LOSS OF BUILDING ALLOCATION FOR 11 BUILDING ALLOTMENTS FOR FY 2002-2003 FOR APPLICATION MP 00-22: COCHRANE - DIVIDEND (APNs 728-42-008, 017; AND 728-43-021).

10. WAIVE READING OF ORDINANCE NO. 1601, NEW SERIES

Action: Waived the Reading, and Approved Ordinance No. 1601, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title, and Further Reading Waived; Title as Follows AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO AMEND A PRECISE DEVELOPMENT PLAN TO ALLOW FOR A 59 UNIT R-1 (7,000)/RPD SINGLE-FAMILY RESIDENTIAL PLANNED DEVELOPMENT LOCATED ON THE NORTH SIDE OF CENTRAL AVENUE - SOUTH OF MORGAN HILL BUSINESS PARK, BETWEEN SERENE DRIVE AND BUTTERFIELD BLVD. (APNS 726-28-001 & 002).

11. WAIVE READING OF ORDINANCE NO. 1602, NEW SERIES

Action: Waived the Reading, and Approved Ordinance No. 1602, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title, and Further Reading Waived; Title as Follows AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT, DA 02-08 FOR MP 01-09: CENTRAL AVENUE-WARMINGTON (APNS 726-28-001 & 002) .

12. WAIVE READING OF ORDINANCE NO. 1603, NEW SERIES

Action: Waived the Reading, and Approved Ordinance No. 1603, New Series, as amended; and Declared That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title, and Further Reading Waived; Title as Follows AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 18.54.160 OF THE MORGAN HILL MUNICIPAL CODE ESTABLISHING REGULATIONS FOR PARKING LOT AND SIDEWALK SALES.

13. SPECIAL CITY COUNCIL MEETING MINUTES OF DECEMBER 18, 2002.

Action: Approved the minutes as written.

3. AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF DOWNEY, BRAND, SEYMOUR AND ROHWER, LLP

Council Member Tate stated that he would not be supporting the amendment to spend additional money on the redistricting lawsuit. He stated that his action was not that he does not support what is trying to be accomplished with the lawsuit. He felt that the City was morally solid and in the right position. However, he was not convinced that the City would win the suit, especially with the financial condition the City is facing with its budget.

Mayor Pro Tempore Chang echoed Council Member Tate's comments.

Council Member Sellers said that the action being recommended this evening allows for additional funds to be expended. The Council is not requesting that the funds be spent. He stated that although he would be supporting the action, he plans on keeping a close watch on the funds and monitoring the process as the City proceeds.

Mayor Kennedy said that the City of Morgan Hill has been disenfranchised by the redistricting process, especially with respect to the congressional district. He said that the City is less than 5% of the district. He felt strongly that the City should fight the legal battle to get the proper representation that the City deserves. Therefore, he would be supporting the recommended action. He recognizes that the Council would be using tax payers' money, but that he was confident that the Council is doing what is right for the tax payers of Morgan Hill

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 3-2 vote with Mayor Pro Tempore Chang and Council Member Tate voting no, **Authorized** the City Manager to Execute an Amended Agreement With the Law Firm of Downey, Brand, Seymour & Rohwer, LLP.*

6. URBAN LIMIT LINE (GREENBELT) STUDY APPROVAL OF CONSULTANT CONTRACT

Council Member Sellers noted that the recommendation is to approve the consultant contract for the Greenbelt Study. He noted that staff is recommending a 10% contingency. He recommended that staff return to the Council for authorization of expenditure of the 10% contingency. Should the project go over budget, there would be an additional scope of work that would have to be identified.

Director of Community Development Bischoff said that staff would anticipate using the contingency funds only if it took more time than expected that would involve more meetings, resulting in additional costs to the City. Should the committee decide that it wants to look at assigning land use designations outside of the 20 year planning horizon; this would involve additional environmental work and additional costs.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0): 1) **Approved** Contract with Moore Iacofano Goltsman, Inc. (MIG) for Work on the Urban Limit Line Study with a Maximum Budget of \$245,783; 2) **Approved** a Budget Amendment to Increase the Greenbelt Study Budget by \$45,783, with a \$27,470 Appropriation From the General Plan Update Fund and Loan From the Other Contributing Funds, and 3) **directed** staff return to the Council for the approval of the expenditure of contingency funds.*

City Council and Redevelopment Agency Action

Action: *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the City Council/Redevelopment Agency Board unanimously (5-0),*

Approved Consent Item 14, as follows:

14. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF DECEMBER 18, 2002
Action: Approved the minutes as written.

City Council Action

OTHER BUSINESS:

15. DISCUSSION OF PHASING FOR COMMERCIAL PLANNED UNIT DEVELOPMENT (PUD)

Director of Community Development Bischoff informed the Council that staff is recommending that this be a general discussion of PUDs and not specifically focus on the Tennant PUD. He indicated that the General Plan states that the properties at the freeway interchanges should be zoned PUD. He referred to Policy 10c of the Land Use Element, noting that it states that these properties should be zoned PUD to ensure that they are developed in a coordinated manner, addressing such issues as design, signage and circulation. He stated that the PUD zoning ordinance requires that the first person who is interested in developing within a PUD would have the responsibility of developing the master plan for the entire PUD. He indicated that frequently, there are multiple properties in areas designated as PUDs and that you may have a single property owner who is interested in developing a portion of the PUD. It would be incumbent upon that property owner to develop a master plan for the entire area. He indicated that the City does not want to allow parcels within a PUD to develop in a piecemeal manner without looking at the big picture in order for development to be coordinated. Another issue before the Council is the fact that there is a demand for a gasoline station and fast food restaurant before a demand for other uses the Council would like to see over a long term in the PUD.

Mr. Bischoff noted that the General Plan stipulates highway commercial uses in freeway PUDs. Therefore, the City wants to reserve these interchange PUDs for larger comparison uses. Staff understands that ancillary uses such as fast food restaurants and gasoline stations are oftentimes found in association with larger comparison uses. However, there is an action in the City's General Plan that states that the zoning ordinance should be amended to require that ancillary commercial uses such as fast food restaurants and service stations on lands around interchanges be a part of larger development. The reasoning behind this policy is that the City recognizes that there is a need for ancillary uses and that the City is willing to accept them, but not accepting them in advance of the larger comparison shopping business that the City would like to see at the freeway interchange. If ancillary uses are proposed, it should be a part of a development package. He indicated that there are individuals who are interested in developing a gasoline station/mini mart and a fast food restaurant at the Tennant Avenue PUD site. Although a master plan has been developed for the entire property, the applicant does not have the comparison type uses being sought by the City. What is being proposed is in direct conflict to the General Plan action item. He informed the Council that the Planning Commission supported the General Plan action item and that they do not want to see the ancillary uses established before the major uses in the PUD. He indicated that representatives for the Biedermann property were in attendance to address the Council regarding the development of the property.

Mayor Kennedy opened the floor to public comment.

Vince Burgess, Development Processing Consultant, indicated that he has been involved with the PUD going back to 1993, excluding Dr. Biedermann's property. He stated that the original applicants were the four property owners east of the Biedermann site, noting that Mr. Biedermann has been brought in since the general plan included his site as part of the PUD for this area. He said that there are two property owners who would like to develop the ingress-egress circulation at this time in order to move forward and find a tenant. He said that it is difficult to market the property without having the zoning in place and knowing the uses, buildings, circulation and signage that would be required to be built. It is his hope that the phasing could include the two users who have made the application and the infrastructure that they intend to install. This would open the door for the balance of the PUD to develop.

City Manager Tewes said that the policy question arises out of a specific application. He urged the Council and the speakers to try to avoid having a hearing on the application as the zoning hearing has not been noticed and has not been considered by the Planning Commission. He said that the policy question outlined by staff has been considered by the Planning Commission and now is before the City Council. He requested that the Council keep its comments to the policy question.

John Telfer said that the only issue being addressed this evening is that of phasing which relates to action item 10.5 referenced in the staff report. He said that the difficult issue the Council has to consider is that the PUDs mentioned by staff are large parcels of land similar to this and are by most circumstances owned by one owner/developer. The one exception to this is the Condit Road PUD which was recently approved for the Harley Davidson project. To his knowledge, this PUD was not considered as part of item 10.5 and did not have to wait for another big user to locate at the site before being allowed to move forward with the approval process. He requested consistency from the City in actions being taken as this is a similarly sized parcel with multiple owners. He felt that the Condit PUD appears to have been treated differently than the Tennant PUD. He stated that the difficulty being experienced is that there are five different property owners within the PUD. He concurred that the first property owner wanting to develop is responsible for the PUD plan. He said that two property owners have made the submittal with the concurrence of the other property owners. He indicated that all property owners have viewed the plan and are in general agreement with it. This gives the City complete control over the design quality that the project will some day have.

Mr. Telfer informed the Council that Dr. Biedermann has owned the property for close to 18 years and Nick Boyles has owned his property for approximately five years. These two property owners would like to move forward with development of their properties. Dr. Biedermann would like to build a medical facility on a portion of his property. He indicated that Dr. Biedermann is one of the premier allergist in the bay area with 4-5 clinics throughout the bay area, including one in Gilroy. Dr. Biedermann would like to construct a 10,000 square foot medical building on a portion of his property. He clarified that Dr. Biedermann expects that his allergy clinic would take approximately 2,000 square feet with the remaining 8,000 square feet to be used by a radiologist, a pediatrician and/or a general practitioner. He said that a laboratory recently closed and Dr. Biedermann is hopeful that he can bring these medical uses into the building; however, there is no commitment to date. He said that there may

be the case that the other three property owners that never elect to build or develop their properties. He noted that one of the property owners is a church who has expressed no interest in selling or developing. He stated that the City is telling the two property owners that they do not have a right to develop their property until the other property owners are willing to develop. He did not believe that the City could deprive property owners from developing their property. Also, of concern is the inconsistency with a prior PUD approved within the last 10 months that was treated differently. He requested Council direction and empathy to what these two property owners are experiencing.

Council Member Tate noted that the policy that is to be addressed is that of ancillary uses such as gasoline stations and fast foods. He never considered the Harley Davidson use as an ancillary use.

Mr. Telfer indicated that he has been told by staff that they are looking for an anchor tenant before allowing these uses to proceed. He did not believe that the Harley Davidson was an anchor tenant to a 34-acre PUD. He stated that staff has indicated that they would prefer that one developer purchase the entire PUD before moving forward. He did not believe that this direction was within the City's jurisdiction to dictate.

Mr. Bischoff clarified that a policy in the General Plan contains an action item that states that "ancillary commercial uses such as fast food restaurants and service stations be part of a larger development." He said that until the City amends the zoning code, this is a Council interpretation. The Council needs to determine what is considered "larger development." It is no doubt that it would be better or ideal that a single developer proceed with development. However, the City could not require this. Regarding the Cochrane Road PUD, he said that long before it was established as a PUD; there was a lot of parcelizations associated with the PUD. He said that there has been a significant amount of development there, noting that Harley Davidson is not a fast food restaurant or gas station. He did not see that staff is being inconsistent in the application of the code/general plan. He noted that Harley Davidson is proposing to construct a 20,000-30,000 square foot facility.

Mayor Pro Tempore Chang inquired as to the definition of a "major tenant."

Mr. Bischoff did not believe that there was a definition for a major tenant. However, having an anchor tenant such as Circuit City, Fry's, Good Guys, Home Depot, or Costco could be defined as being a part of a larger development. As an alternative, the Council could consider a series of smaller uses. He said that this is a Council policy matter.

Mayor Kennedy inquired whether Dr. Biedermann has submitted a development application?

Mr. Bischoff informed the City Council that Dr. Biedermann submitted an application for the entire 38-acres. He has been advised that Dr. Biedermann is interested in constructing a 10,000 square foot medical building. He has also been told that although there is a site plan developed, that Dr. Biedermann's building is not necessarily shown to be part of the site plan.

Mr. Burgess indicated that a specific building application has not been submitted because an application cannot be made until the zoning is put into place. He said that Dr. Biedermann's proposed building would be substantial on his property with the infrastructure that he plans on building which

includes the full ingress-egress coming in from Tennant Avenue, extending Juan Hernandez Drive into the project. Also, proposed is the installation of signage and all landscaping along the frontage of the area. He felt that this is a substantial amount of improvements. Allowing Dr. Biedermann's building may not be considered a major tenant, but that it is a substantial use.

Mayor Kennedy inquired how policy 10c applies?

City Manager Tewes stated that the general plan policy is in place and that it designates the area for subregional commercial. The general plan policy states that this area should be developed in accordance with a PUD. He said that action item 10.5 is the one he believes Mr. Telfer is most concerned about which relates to the requirement that ancillary uses only be allowed as part of a larger development. The applicants have asked the Planning Commission for guidance on what it thought the larger developments should be. He noted that the staff report states that the Planning Commission, on a 5-2 vote, did not believe that a 10,000 square foot medical facility was a sufficiently large development.

Council Member Sellers stated that two issues concern him: 1) unintended consequences; and 2) consistency of application. He expressed concern with the fact that the City spends a lot of time talking about economic development and the need for it. He noted that the City continues to discuss the need for medical services. He felt that the City has an opportunity to provide additional medical services and to assist in economic development. However, the policy, as stated, has the unintended consequences of stifling it in this case. He took a look at the overall issue of why the Council adopted policy 10.5. It was his belief that the reason for doing so was attributed to the fact that the City wants to make sure that it does not end up with smaller uses that would preclude larger uses down the road. When the Council looked at the Gateway project, there was a concern that the only use being guaranteed was the fast food and gasoline station. There was no guarantee of an anchor tenant as part of subsequent phases. The only guarantee that this developer had was economics. He said that the infrastructure was significant enough that it is being stated that the developer would be losing his shirt unless the developer includes additional uses. This was the argument used in the Gateway center, noting that he did not support that PUD. He understood that the ideal is not to have just a gasoline station sitting alone for an extended period of time. He inquired whether this would achieve the City's larger goal? He questioned whether the City would end up with a higher likelihood of attracting other uses because the applicant started the process and installed the roads. There is also a question of whether the City was going to preclude other development because of a gasoline station. He did not believe that the Council would be violating the policy in this case. He said that it would be an easy decision if the use would be a big box retail. However, given the situation that the City is in at this time, he would consider a medical office building a major development because of what it might mean to the community. Therefore, he is open to giving the policy a different interpretation than he would if the City still had the hospital open and the need was not so critical. He stated that it is his inclination to allow more latitude than the City currently allows in the policy so that the City can allow the PUD to proceed.

Council Member Tate stated that he was bothered by the fact that you can have property owners in the middle that do not want to develop their properties. He said that the policy could prevent development from occurring, even ancillary uses if you have a similar situation. He sees this as taking away the

rights to develop because the City insists on the PUD where no one really wants to development. He did not know if this was a legal basis.

City Attorney Leichter said that the applicant can return with a different proposal for a different use that may be more susceptible to drawing a larger development to the site. She stated that neither the policy, action nor staff has precluded development of this site. It is the applicant's choice to come forward with an application for a gasoline station and mini mart which have been defined as commercial uses. The policy question before the Council is what constitutes a larger development and whether the Council is willing to state that a 10,000 square foot medical office building is enough to be considered a larger development. She indicated that this is the policy question. She assured the Council that this does not preclude all development of the site or take away any of the property owners' development rights.

Mayor Kennedy said that one of the issues here, as was the case with the Harley Davidson site, is that these are not large parcels of land.

Mr. Bischoff indicated that the entire area is 28-acres and that the parcel that Dr. Biedermann owns is 14-acres. He stated that the parcel that is proposed for the gasoline station and the fast food restaurant is approximately 4.5 acres.

Council Member Sellers referred to the Gateway project where it was stated that economics would not work unless the first use in was a gasoline station and fast food because these uses would be the only uses that would provide the sufficient income and resources to install the infrastructure. He inquired whether a case could be made that in defacto, you are not allowing one kind of development that would allow the entire project to proceed, therefore, the City would not be allowing the whole project to proceed. He felt that the uses that would allow the rest of the project to proceed are not being allowed to move forward.

City Attorney Leichter clarified that the City is requiring that the applicant come up with a PUD plan which demonstrates how the entire PUD area is to develop. As part of the application, the City is requesting to know what is part of the larger development or the focal point that is consistent with policies 10a, 10b, and 10c. She indicated that the larger development would depend on each individual parcels in the City as to what the appropriate larger development should be. She stated that when an applicant comes in and states that this does not work out economically and that they have to proceed with an ancillary use first is not the legal standard. She indicated that the legal standard is whether the property owner has been deprived of all economic use of their property. She re emphasized that it is the applicant's choice to come forward with a gasoline station and a mini mart. Unlike the Gateway project where you had one developer/parcel owner, the applicant has one parcel that is being impacted but that they are not being deprived of all economic use of their property.

Council Member Sellers and Mayor Pro Tempore Chang inquired what was the large development identified for the Gateway project.

City Manager Tewes indicated that in this instance, development relates to policy 10.5 on lands around freeway interchanges. He noted that the policy does not apply to the Gateway project or the Safeway

gasoline station. However, the Council approved a gas station in the case of Safeway, conditioned upon simultaneously development of a grocery store. In the case of the Gateway project, the Council approved the AM/PM subject to simultaneous development of the in line shops. These were conditions imposed by the Council as part of its zoning decisions. Now, the Council is talking about the general plan policy with respect to commercial lands around interchanges where the general plan states that the City does not want to see gasoline stations all by themselves but would like to see them as part of larger developments. The applicants requested that the Planning Commission help them understand what is meant by a “larger development.” In this instance, the Planning Commission stated that they do not believe that a 10,000 square foot medical office building is a sufficiently large development to allow the construction of only the gasoline station and fast food restaurant. He stated that Council Member Sellers agendized this item to see whether the Council wanted to give an opinion on what would constitute the larger development that would allow the gasoline station and fast food restaurant to proceed.

Council Member Sellers stated that he was anxious that the City may end up with a larger development that it does not need and yet have a smaller development that is needed not to proceed. He wanted to make sure that the intent matches the action; thus, the reason for bringing the issue up.

Council Member Carr stated that the City went through the process of updating the general plan and discussed the different issues; noting that we were in a different economy and a different time. He felt that the Council wants to set precedent and policies that would last a while and to be general in nature. However, he felt that the City needs to think about some of the specificity of today’s market/economy in what is being addressed. He felt that three years ago, when the City was updating the general plan, it was a market time where it could easily be stated that there was much demand. The City could hold out to get the development it wanted. He was not sure that this was the case anymore with today’s economy. He wanted to know how the City balances the right amount of infrastructure and ancillary uses in order to market the rest of the project. This would result in allowing the City to recruit the type of anchor tenants that it would like to see in order to make the sub regional centers thrive and be what they need to be for the community, and provide a tax base. He felt that once you have a PUD approval in hand, you have an understanding that certain things would take place that would make it easier to market the PUD. He stated that he was struggling with how to apply the policy in place in such a way that meets the needs of today’s economy that would allow development to occur.

City Attorney Leichter suggested that instead of getting into interpreting what the current general plan states that the Council provide staff with direction on what its concerns are in terms of how can the City work with the language in the general plan that would accomplish the Council’s objectives in today’s economy and yet meet the needs of the applicant. She recommended that the Council set the general plan policy aside for now. Instead of trying to define large development and ascribe economic consideration, she said that staff would try to reconcile the Council’s intent with what is currently stated in the general plan.

Mayor Pro Tempore Chang stated that she was having difficulty in considering a gasoline station, a fast food restaurant and a carwash as a major tenant for a 29-acre sub regional area. She was also having difficulty in deciding whether these uses would hinder the overall sub regional plan. She stated that she was sympathetic with the proposed 10,000 square foot medical facility; however, she noted

that another 10,000 square foot medical facility is located across the street, on Juan Hernandez Drive. If the Council considers this a major use for the site, she inquired whether the Council would be putting itself in a place where the City would not have a true major economic development. She also noted that the City has a medical office building in place and that the Council recently approved two gasoline stations, minimarts, and carwash facilities. She felt that there were other locations for fast food restaurants. She questioned whether the City is competing with itself and getting the same resources that currently exist in the City or whether the City should look at what can be done to the site to attract a major user. She did not consider a 10,000 square foot medical facility as a major tenant. If it was a 20,000 square foot facility similar to the Harley Davidson proposal, she would support the use.

City Attorney Leichter cautioned the Council not to address specifics of the application because it would be returning to the Council at a future date.

Mayor Kennedy stated that it was his belief that the intent of the general plan policy language was to preserve large freeway interchanges for large scaled projects. If the City allows development of smaller projects to proceed, the City would lose the potential of attracting larger projects which are needed. Economically, he did not believe that the benefits were sufficient to lose a prime site for larger development to allow the smaller project to proceed. He stated that he would like to preserve the key freeway interchanges for larger projects. Therefore, he would support the general plan policy as stated.

Council Member Sellers did not believe that the Council has come to a uniform conclusion. He stated that he was anxious that the Council provide sufficient direction to staff and the applicant.

Mayor Kennedy said that it was his belief that three council members are leaning in favor of protecting the general plan language and try to achieve a large PUD project.

Council Member Tate said that he was in line with the comments expressed by Mayor Kennedy and Mayor Pro Tempore Chang. He stated that if he could see that allowing the medical office complex or whatever complex would occupy the 10,000 square foot building, that it would not be just a 10,000 square foot building on a 14-acre parcel. He said that he would support a Council direction the precludes piecemeal development.

Mayor Kennedy said that he would consider a significantly sized commercial project in excess of 20,000 to 40,000 square feet. He stated that he would be open to this type of large scale development.

Council Member Carr said that this is a case of the chicken before the egg syndrome. He was not sure if it was fair to characterize that he and Council Member Sellers are not in favor of making sure that highway interchanges are preserved for large development. The question is whether the City should allow phasing of some of the ancillary uses that includes the installation of infrastructures to attract large anchor tenants. He felt that allowing property owner and developers to invest into a PUD would allow the property to be marketed to larger tenants. He felt that these issues need to be addressed for staff and the developers. He noted that Morgan Hill does not have a lot of projects in the pipeline. He felt that the City needs to allow some flexibility in the process. He said that he was not ready to let

this issue go this evening because he did not believe that the Council has given sufficient direction to anyone. He inquired how the Council could establish the steps that would allow the PUD to move forward and allow property owners who have expressed an interest in developing for several years to move forward with the development process? He felt that the Council has some fundamental issues about property rights to address that would allow property owners to move forward.

Mayor Pro Tempore Chang said that she was somewhat in line with Mayor Kennedy's suggestion that a 40,000 square foot building would be considered a major project. She felt that the Council was trying to wrestle with the definition of what would be considered a major project and what would be considered significant enough to allow development to move forward.

Council Member Sellers said that individuals who know about downtown development, you build from the small steps up. He felt that this was the issue that the Council was wrestling with this evening regarding how to build the PUD up. He clarified that the Council is clear as what the ancillary uses are. Therefore, the Council can focus on what should be considered as large development. He stated that he was anxious about placing a specific number as a policy direction because he foresees a large development coming that he would believe makes no sense. Conversely, he could see a smaller development that would make a lot of sense. He stated that he did not see anything that would preclude large development in what has been established. The Council has stated clearly that there needs to be larger development as this is a freeway commercial area. He felt that the ancillary uses would be a catalyst for larger development and felt that the City should allow them. Also, he felt that the Council would be enhancing the ability of economic development to take place by allowing the infrastructure to be installed. If he felt that allowing the ancillary uses to proceed would prevent larger development to locate in the sub regional retail area, then he would not support the PUD moving forward. He did not believe that anyone was suggesting a policy change that would allow for someone to come in and put together freeway development that would include only small businesses and small projects. Allowing small projects to proceed would allow a larger user to come in that would have some benefit.

Mayor Kennedy said that he did not believe that smaller projects such as a gasoline station and fast food restaurant would help stimulate growth. In fact, it was his belief that this would hinder the potential to put in a larger project on the site. He apologized to the property owners as this is his philosophical position in terms of planning.

Council Member Tate did not recommend identification of square footage to dictate what a large project is. He recommended that the Council view the pattern of what the larger development would be.

Mayor Kennedy said that by using numbers, he did not mean that this is a policy statement. In order to discuss the issue, he felt that the Council needs to discuss numbers to get a sense of what it is thinking.

Council Member Carr agreed that the City needs to discuss patterns versus specifics. If the City is to see a proposal that talks about a 10,000 square foot building on 14-acres, how would the City know the balance of development? He wanted to know how the City would get to a point without having an

anchor tenant so that the Council can see that there is a pattern that would be acceptable to it and move forward and draw an anchor tenant.

Mr. Burgess stated that the discussion of what the City would ultimately end up with is the reason for going through the exercise of the PUD; guaranteeing that through zoning, the text would define the amount of building coverage, parking, and circulation. He said that the Council would need to approve an amendment to what would be approved in the zoning. He said that the PUD zoning application is a small part of approximately 15 pages of 70 items that detail every aspect of the project. He informed the Council that he has submitted a PUD application. He said that the only thing that has kept the PUD from moving to the Planning Commission is that the applicants would like to be part of the initial process of being able to develop what will be approved. He said that the intent of submitting an application was to build the two uses as the first part of the original phasing (signage, 10,000 square foot medical facility, gasoline/fast food facility).

Mr. Telfer said that this began as a PUD application with a plan and many pages of text that would go with the PUD approval. The confusion is that there are two property owners who want to develop a portion of their property. He said that the proposed 10,000 square feet on Dr. Biedermann's 14-acres is by no means the end result of development. There will be many more square feet built upon this property in the future that would comply with the PUD, once approved by the Council and the phasing issue is resolved. He said that the Council will have the opportunity to tell the applicants what types of uses would be allowed/disallowed in the PUD. The Council will also approve the architectural style, the location of the building, the circulation plan, the landscaping plan, etc. He informed the Council that Dr. Biedermann does not want to sell his property and would like to build to suit on the balance of the property. He stated that Dr. Biedermann and his colleagues would like to build in the first phase. He said that restaurants and other retail uses would be sited appropriately. He informed the Council that City staff is requesting the preparation of a full blown environmental impact report on this project at a cost of approximately \$20,000. He said that it does not make economical sense for the two small first phase development to spend these funds. Should the Council not allow the applicants to move forward, they would probably withdraw the application. This may result in the property sitting idle until a single buyer comes along. He stated that he needs the zoning in place to market the PUD, noting that the zoning would not be put into place unless the Council gets through the phasing issue.

City Manager Tewes stated that the applicant can apply for zoning as outlined by Mr. Burgess. However, it is the general plan policy that requires that the ancillary uses occur as part of the development and not prior to it. He said that the applicant is not willing to make the investment if they do not have the policy guidance about their particular phasing development as is being proposed.

Mayor Pro Tempore Chang inquired whether an individual looking to develop in the City would prefer a vacant land versus a master plan, or would the individual look for land that has certain things in place. She noted that the zoning for this area is sub regional.

Mr. Bischoff said that staff has found that it would be better to have some of the documents already in place. He said that the City had a situation at the northeast quadrant of Highway 101 where there were multiple property owners and that there has not been an agreement in terms of cross easements, access, signage, etc. As an agreement is not in place, it has been difficult to market the property. He agreed

that having these things in place and there was agreement among the property owners in term of marketing a piece of property would be helpful. He felt that there would be a benefit in having a PUD in place. He did not believe that having a gasoline station and/or fast food restaurant in place would add much value.

Mayor Kennedy inquired whether the City was asking for something that would be impossible to deliver? He said that there is a lot of money to put upfront on the part of the developer.

Mr. Bischoff said that it would be a function of whether an EIR would be necessary for the property and that this would be a function of what would be involved. He stated that he has not reviewed whether an EIR would be required for this project. He noted that an EIR was prepared for the general plan update and that it made certain assumptions. If what the applicant is proposing falls under the umbrella of what was analyzed as part of the EIR for the general plan update, an EIR may not be necessary. He indicated that he would need to review the information in order to make the determination of whether or not an EIR would be required.

Mayor Kennedy felt that it would be important to know whether an EIR would be required for this project.

Council Member Chang inquired whether another EIR would be required if a new tenant comes in that wants to locate in a different area once a PUD is approved?

Mr. Bischoff responded that an amendment to the PUD would be necessary and that depending on the manner in which the use would differ, the City may need some additional environmental evaluation. He said that an amendment to the PUD would not necessarily require an EIR but would require some form of evaluation.

Mr. Telfer indicated that planning staff has provided EIR bid estimates. He was told that the reason that the general plan EIR is not relevant in this case is due to the fact that the square footage identified is almost double that identified in the global EIR. He inquired where one has seen a 150,000 square foot sub regional shopping center? He said that what is being proposed is over 350,000 square feet of retail space. Thus, the reason for the EIR. He said that in one hand, he is hearing that the City wants a large scale development and on the other hand, he is hearing that the proposal is too big. It is being stated that the general plan only allowed for 150,000 square feet. He said that the fast food restaurant being considered is a Wienerschnitzel, noting that this is not a repetitive use. If the Council does not want fast food, it can be eliminated.

Mr. Bischoff stated that the new general plan, as it deals with commercial development, has more vacant commercial land planned and zoned than the City would need over a 20-year period. The City's vacant commercial inventory is more like a 40-year inventory. When the City prepared the EIR for the general plan, the City made certain assumptions. The City recognized that not all of the land inventory would develop over a 20-year period. The traffic analysis for the general plan update assumed that not all of the City's commercial properties would develop. In a number of locations, it assumed that only a portion would develop. He stated that he was not certain whether in this specific area the general plan EIR assumed something less than full build out of the property. It is not that the

general plan assumed that there would only be 150,000 square feet in the Biedermann parcel, it only assumed that only this amount would develop in a 20-year time frame. It is because the EIR did not assess the full traffic potential within the 20-year period then an additional traffic analysis would be required.

Mayor Pro Tempore Chang said that she was trying to evaluate whether the area was general planned correctly. She felt that the City has two general commercial areas that are similar (Guglielmo and this area). She inquired whether the Council is over zoned sub regional, whether there should be a change in direction, or whether it should remain the same. She stated that she needs to give further thought to the issue of what is considered to be big development.

Mayor Kennedy did not know if there was a problem in having an excessive amount of land general planned for commercial. He felt that it would be important to provide options to developers to look at.

Mr. Bischoff did not believe that it would be a detriment to the city to have more sites designed as sub regional than it may need.

Action: **No action taken.**

SECOND READING OF ORDINANCE:

Mayor Kennedy indicated that he resides within 500 feet of item 16. Therefore, he would be recusing himself from this item. He stepped out of the Council Chambers.

16. ADOPTED ORDINANCE NO. 1599, NEW SERIES

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Adopted** Ordinance No. 1599, New Series, as follows: An Ordinance of the City Council of the City of Morgan Hill Approving a Development Agreement for Application MP-01-07: Shafer-Bamdad (APN 728-10-005)/(DA-02-07: Shafer-Bamdad), by the following roll call vote: AYES: Carr, Chang, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Kennedy.*

Mayor Kennedy resumed his seat on the dais.

Mayor Pro Tempore Chang indicated that she resides within 500 feet of agenda item 17. Therefore, she would be recusing herself from this item. She stepped out of the Council Chambers.

17. ADOPTED ORDINANCE NO. 1600, NEW SERIES

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Adopted** Ordinance No. 1600, New Series, as follows: An Ordinance of the City Council of the City of Morgan Hill Approving a Development Agreement, DA-02-10: East Dunne-First Community Housing for Application MP 01-12: East Dunne-First Community Housing (APN 817-11-069), by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.*

Mayor Pro Tempore Chang resumed her seat on the dias.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Council Member Sellers said that he has heard a lot of discussion in the Downtown Task Force and other areas about the Isaacson building. It was his understanding that there may or may not be some economic development proposal that they want to bring forth. He requested that the Council consider bringing this item forward.

Council Member Carr indicated that the economic subcommittee is considering this proposal and has requested additional information from the applicant. He indicated that it is hoped that the subcommittee can bring this item before the Council soon.

Council Member Tate said that the economic subcommittee is trying to put a strategy in place. He stated that the strategy cannot be put into place to meet the time schedule of an applicant. He indicated that he met with Mr. Weston and that he understands the timeframe.

Mayor Kennedy requested that the Council discuss the Isaacson proposal at a future meeting.

Council Member Carr said that he was still uncomfortable with the way the Council left item 15. He requested that staff bring this item back to the Council so that the Council can give clear direction. He did not believe that the majority of the Council has given clear direction to staff or the applicant. He would like to find a way for the Council to provide clear direction.

Mayor Kennedy suggested that the Council request that staff look at other options or possibilities and that this item be brought back for further discussion.

City Manager Tewes stated that the applicant may have other options on packages, phasing and sequencing of development that may be of help to the Council.

ADJOURNMENT

There being no further business, Mayor/Chairperson Kennedy adjourned the meeting at 8:40 p.m.

MINUTES RECORDED AND PREPARED BY

IRMA TORREZ, City Clerk/Agency Secretary